

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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VINCENT MASINO, KEITH LOSCALZO,  
FRANCISCO FERNANDEZ, PHILIP A. FAICCO,  
JAMES KILKENNY and EDWARD DRAGO, as  
Fiduciaries of the PAVERS AND ROAD  
BUILDERS DISTRICT COUNCIL WELFARE,  
PENSION, ANNUITY AND APPRENTICESHIP,  
SKILL IMPROVEMENT AND TRAINING FUNDS,

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

10-CV-2341 (KAM) (RML)

Plaintiffs,

-against-

A TO E, INC.,

Defendant.

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**MATSUMOTO, United States District Judge:**

Plaintiffs Vincent Masino, Keith Loscalzo, Francisco Fernandez, Philip A. Faicco, James Kilkenney and Edward Drago ("plaintiffs"), Trustees and Fiduciaries of the Pavers and Road Builders District Council Welfare, Pension, Annuity and Apprenticeship, Skill Improvement and Training Funds (collectively, the "Funds"), brought this action against defaulting defendant A to E, Inc. ("defendant"), alleging that defendant has failed to make certain monetary contributions to the Funds as required by a collective bargaining agreement to which defendant is bound. (See generally ECF No. 5, Amended Complaint ("Am. Compl.").) Presently before the court is a Report and Recommendation ("R&R") issued by Magistrate Judge Levy on September 22, 2011, recommending that this court enter a default judgment against defendant in the amount of \$97,159.58,

which is comprised of (1) \$68,811.20 in unpaid benefit fund contributions; (2) \$8,257.34 in interest on unpaid contributions; (3) \$13,763.24 in liquidated damages for unpaid contributions; and (4) \$5,842.80 in attorney's fees and \$485.00 in costs. (ECF No. 15, R&R, at 10.)

The Report and Recommendation directed counsel for the plaintiff to serve a copy of the Report and Recommendation on defendant. (*Id.*) The Clerk of the Court sent a copy of the R&R via first-class mail to defendant on September 22, 2011. (See Docket Entry dated 9/22/2011.)

As explicitly noted at the end of the Report and Recommendation, any objections to the Report and Recommendation were to be filed within fourteen days of receipt of the report. (R&R at 10.) The statutory period for filing objections has expired, and no objections to Magistrate Judge Levy's Report and Recommendation have been filed.

In reviewing a Report and Recommendation, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where no objection to the Report and Recommendation has been filed, the district court "need only satisfy itself that that there is no clear error on the face of the record." *Urena v. New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189

(S.D.N.Y. 1985)).

Upon a thorough review of the Report and Recommendation, and considering that the parties have failed to object to any of Magistrate Judge Levy's thorough and well-reasoned recommendations, the court finds no clear error in Magistrate Judge Levy's Report and Recommendation and hereby affirms and adopts the Report and Recommendation as the opinion of the court, with the addition of the following corrections to minor mathematical and clerical errors: (1) The total monetary award to plaintiffs is \$97,158.58, not \$97,159.58, as stated on pages 1 and 10 of the R&R; (2) the total liquidated damages to be awarded to plaintiffs is \$13,762.24, not \$13,763.24, as stated on page 10 of the R&R; and (3) footnote 2 of the R&R should state: "Plaintiff's submission contains remittance reports for the months of July through November 2009 and February through June 2010. However, remittance reports for December 2009 and January 2010 were not included in the submission."

Counsel for plaintiff shall serve a copy of this Memorandum and Order upon defendant and file a declaration of service by November 10, 2011. The Clerk of the Court is respectfully directed to enter a default judgment against defendant in the amount of (1) \$68,811.20 in unpaid benefit fund contributions; (2) \$8,257.34 in interest on unpaid contributions; (3) \$13,762.24 in liquidated damages for unpaid contributions;

and (4) \$5,842.80 in attorney's fees and \$485.00 in costs, and to close the case.

**SO ORDERED.**

Dated: November 8, 2011  
Brooklyn, New York

/s/  
Kiyo A. Matsumoto  
United States District Judge